

REMARKS:

Claims 47-48, 50-56, and 58-72 are currently pending in the application.

Claims 1-46, 49, 57, 67, 69, and 71 have been previously canceled without *prejudice*.

Claims 55, 56, 58-62 and 70 stand rejected under 35 U.S.C. § 112.

Claims 55, 56, 58-62, 70, and 72 stand rejected under 35 U.S.C. § 101.

Claims 47-48, 50-56, and 58-72 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 5,861,885 to Strasnick et al. (hereinafter Strasnick '885) in view of U.S. Patent No. 6,665,682 to DeKimpe et al. (hereinafter "DeKimpe '682") and in further view of U.S. Patent No. 6,493,728 to Berger (hereinafter "Berger '728").

Applicants respectfully submit that all of Applicants arguments and amendments are without *prejudice* or *disclaimer*. In addition, Applicants have merely discussed example distinctions from the cited prior art. Other distinctions may exist, and as such, Applicants reserve the right to discuss these additional distinctions in a future Response or on Appeal, if appropriate. Applicants further respectfully submit that by not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are considered sufficient to overcome the Examiner's rejections. In addition, Applicants reserve the right to pursue broader claims in this Application or through a continuation patent application. No new matter has been added.

REJECTION UNDER 35 U.S.C. § 112:

Claims 55, 56, 58-62 and 70 stand rejected under 35 U.S.C. § 112, first paragraph. Applicants respectfully disagree and respectfully request the Examiner to further clarify the rejection.

Applicants respectfully submit that Claims 55, 56, 58-62 and 70 are considered to be in full compliance with the requirements of 35 U.S.C. § 112 and respectfully request that the rejection of Claims 55, 56, 58-62 and 70 under 35 U.S.C. § 112 be withdrawn.

REJECTION UNDER 35 U.S.C. § 101:

Claims 55, 56, 58-62, 70, and 72 stand rejected under 35 U.S.C. § 101. Applicants respectfully disagree and respectfully request the Examiner to further clarify the rejection.

Applicants respectfully submit that Claims 55, 56, 58-62, 70, and 72 are considered to be in full compliance with the requirements of 35 U.S.C. § 112 and respectfully request that the rejection of Claims 55, 56, 58-62, 70, and 72 under 35 U.S.C. § 112 be withdrawn.

REJECTION UNDER 35 U.S.C. § 103(a):

In rejecting Claims 47-48, 50-56, and 58-72 under 35 U.S.C. § 103(a) as anticipated by Strasnick '885 in view of DeKimpe '682 further in view of Berger '728, the Examiner states the following:

With respect to the new claim limitation of a first wall graphical user interface grid associated with a mathematical summarization of the plurality of function values associated with each of the top layer hierarchies of the multi-dimensional axes data hierarchy, the first wall graphical user interface grid perpendicular with the first axis dimension and in parallel with other graphical user interface grids, *Strasnick teaches that the z-axis dimension is associated with the filter levels and heights* that are selectable data objects/blocks and therefore the value hierarchies are associated with the selectable data objects/blocks and the top layer hierarchy at the z-axis dimension at the top of the filter levels is a selectable data object.

(13 November 2008 Office Action, Pages 3-4). (Emphasis added). Applicants respectfully disagree and respectfully submit that Strasnick '885 does not disclose at least the following limitations of Applicants' independent Claim 47:

a database operable to store hierarchically organized data associated with a multi-dimensional hierarchy of data; and

a multi-dimensional graphical user interface coupled to the database and capable of user interaction to provide a multi-dimensional user interactive graph comprising:

a multi-dimensional axes data hierarchy including a top layer hierarchy associated with a first axis dimension, a top layer hierarchy associated with a second axis dimension, and a top layer hierarchy associated with a third axis dimension;

a unique bottom layer hierarchy including a plurality of function values associated with each of the top layer hierarchies of the multi-dimensional axes data hierarchy; and

a *first wall graphical user interface grid associated with a mathematical summarization of the plurality of function values associated with each of the top layer hierarchies* of the multi-dimensional axes data hierarchy, *the first wall graphical user interface grid perpendicular with the first axis dimension*; and

a multi-dimensional value hierarchy associated with each of the function values of the multi-dimensional axes data hierarchy.

In fact, Strasnick ‘885 *does not expressly describe* a “*first wall graphical user interface grid*” of any kind. *Applicants can find no express description of a “first wall graphical user interface grid”* in Strasnick ‘885 and respectfully request further clarification from the Examiner.

In addition, Strasnick ‘885 *does not describe*, as the Examiner appears to be suggesting a *first wall graphical user interface grid*. To the extent the Examiner means to argue that Strasnick ‘885 *z-axis dimension might* inherently represent a “*first wall graphical user interface grid*,” “[i]nherent anticipation requires that the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art.” *Trintec Indus., Inc. v. Top-US.A. Corp.*, 295 F.3d 1292, 1295 (Fed. Cir. 2002) (quoting *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999)). *Applicant is unable to discern from the passages relied upon by the Examiner* that a “*first wall graphical user interface grid*” is necessarily present in Strasnick ‘885. *While it may be possible*, “[i]nherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Hansgirk v. Kemmer*, 102 F.2d 212, 214 (CCPA 1939), quoted in *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1269 (Fed. Cir. 1991).

Furthermore, *the question is not merely whether* Strasnick ‘885 describes a “*first wall graphical user interface grid*” *but* whether Strasnick ‘885 describes a “*first wall graphical user interface grid associated with a mathematical summarization of the plurality of function*

values associated with each of the top layer hierarchies of the multi-dimensional axes data hierarchy, the first wall graphical user interface grid perpendicular with the first axis dimension,” as described in Claim 47.

Accordingly, Strasnick ‘885 does not inherently describe a “*first wall graphical user interface grid*” as defined in claim 47.

Thus, Applicants respectfully submit that the Office Action fails to establish a *prima facie* case of obviousness of Claim 47 under 35 U.S.C. § 103(a) with respect to Strasnick ‘885, DeKimpe ‘682 and Berger ‘728 because Strasnick ‘885, DeKimpe ‘682 and Berger ‘728 fail to expressly or inherently describe a “*first wall graphical user interface grid*”, as claimed in Claim 47. Accordingly, Applicants respectfully request that the rejection of Claims 47-48, 50-56, and 58-72 under 35 U.S.C. § 103(a) be withdrawn.

Office Action Fails to Properly Establish a Prima Facie case of Obviousness over the Proposed Strasnick ‘885 - DeKimpe ‘682 - Berger ‘728 Combination According to the UPSTO Examination Guidelines

Applicants respectfully submit that the Office Action fails to properly establish a *prima facie* case of obviousness based on the proposed combination of Strasnick ‘885, DeKimpe ‘682, or Berger ‘728, either individually or in combination, and in particular, the Office Action fails to establish a *prima facie* case of obviousness based on the “Examination Guidelines for Determining Obviousness Under 35 U.S.C. § 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*” (the “Guidelines”).

As reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc.* (*KSR*), the framework for the objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)). Obviousness is a question of law based on underlying factual inquiries. These factual inquiries enunciated by the Court are as follows:

- (1) Determining the scope and content of the prior art;
- (2) Ascertaining the differences between the claimed invention and the prior art; and
- (3) Resolving the level of ordinary skill in the pertinent art.

(Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). Objective evidence relevant to the issue of obviousness must be evaluated by Office personnel. (383 U.S. 17–18, 148 USPQ 467 (1966)). As stated by the Supreme Court in *KSR*, “While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.” (*KSR*, 550 U.S. at ___, 82 USPQ2d at 1391).

However, it is important to note that the Guidelines require that Office personnel “**ensure that the written record includes findings of fact** concerning the state of the art and the teachings of the references applied. (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). In addition, the Guidelines remind Office personnel that the “**factual findings made by Office personnel are the necessary underpinnings to establish obviousness.**” (*id.*). Further, “**Office personnel must provide an explanation to support an obviousness rejection** under 35 U.S.C. 103. (*id.*). In fact, “35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed” and “clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability.” (*id.*).

With respect to the subject application, the Office Action has not shown the **factual findings necessary to establish obviousness** or even **an explanation to support the obviousness rejection** based on the proposed combination of Strasnick ‘885, DeKimpe ‘682, and Berger ‘728. The Office Action merely states that “it would have been obvious to one of the ordinary skill in the art at the time of invention was made to incorporate DeKimpe or Berger’s multi-dimensional user graphical interface.” (13 November 2008 Office Action, Page 30). Applicants respectfully disagree and respectfully submit that the Examiner’s conclusory statement is not sufficient to establish the **factual findings necessary to establish obviousness** and is not a sufficient **explanation to support the obviousness rejection** based on the proposed combination of Strasnick ‘885, DeKimpe ‘682, and Berger ‘728.

The Guidelines further provide guidance to Office personnel in “determining the scope and content of the prior art” such as, for example, “Office personnel must first obtain a thorough understanding of the invention disclosed and claimed in the application.” (Notice, 72 Fed. Reg. 57527 (Oct. 10, 2007)). The scope of the claimed invention must be clearly determined by giving

the claims the “broadest reasonable interpretation consistent with the specification.” (See *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) and MPEP § 2111.). In addition, the Guidelines state that any “*obviousness rejection should include*, either explicitly or implicitly in view of the prior art applied, *an indication of the level of ordinary skill.*” (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). With respect to the subject Application, the Office Action has not provided *an indication of the level of ordinary skill*.

The Guidelines still further provide that once the *Graham* factual inquiries are resolved, Office personnel must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. (*Id.*). For example, the Guidelines state that *Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.* (*Id.*). In addition, the Guidelines state that the proper analysis is *whether the claimed invention would have been obvious to one of ordinary skill in the art after consideration of all the facts.* (*Id.* and See 35 U.S.C. 103(a)).

With respect to the subject Application, the Office Action has not expressly resolved any of the *Graham* factual inquiries to determine whether Applicants invention would have been obvious to one of ordinary skill in the art. In addition, the Office Action fails to *explain why the difference(s) between the proposed combination of Strasnick ‘885, DeKimpe ‘682, Berger ‘728, and Applicants’ claimed invention would have been obvious to one of ordinary skill in the art.* The Office Action merely states that “because Strasnick’s multi-dimensional data hierarchy and drilling up and down the hierarchical structure and thus suggests drilling up and down multi-dimensional hierarchies including the three-dimensional layout of the hierarchical structures of displayed objects.” (13 November 2008 Office Action, Page 30). Applicants respectfully disagree and further respectfully request clarification as to how this statement *explains why the difference(s) between the proposed combination of Strasnick ‘885, DeKimpe ‘682, Berger ‘728, and Applicants’ claimed invention would have been obvious to one of ordinary skill in the art.* Applicants further respectfully submit that the Examiner is using the subject Application as a template to formulate reconstructive hindsight, which constitutes impermissible use of hindsight under 35 U.S.C. § 103(a).

The Guidelines yet further state that the “key to supporting any rejection under 35 U.S.C. § 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious.*” (Notice, 72 Fed. Reg. 57528 (Oct. 10, 2007)). In fact, the Supreme Court in *KSR* noted that “*the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.*” (*id.*). The Court quoting *In re Kahn* (441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)), stated that “[R]ejections on *obviousness cannot be sustained by mere conclusory statements*; instead, there *must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*” (*KSR*, 550 U.S. at ___, 82 USPQ2d at 1396). The Guidelines provide the following seven rationales:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Applicants respectfully submit that the *Office Action fails to provide any articulation, let alone, clear articulation of the reasons why the Applicants claimed invention would have been obvious.* For example, the *Examiner has not adequately supported the selection and combination of Strasnick ‘885, DeKimpe ‘682, and Berger ‘728 to render obvious Applicants’ claimed invention.* The Examiner’s unsupported conclusory statements that “it would have been obvious to one of the ordinary skill in the art at the time of invention was made to incorporate DeKimpe or Berger’s multi-dimensional user graphical interface” and “because Strasnick’s multi-dimensional data hierarchy and drilling up and down the hierarchical structure and thus suggests drilling up and down multi-dimensional hierarchies including the three-dimensional layout of the hierarchical

structures of displayed objects,” *does not adequately provide clear articulation of the reasons why the Applicants claimed invention would have been obvious*. (13 November 2008 Office Action, Page 30). In addition, the Examiner’s unsupported conclusory statement fails to meet any of the Guidelines rationales to render obvious the Applicants claimed invention.

Thus, if the Examiner continues to maintain the obvious rejection based on the proposed combination of Strasnick ‘885, DeKimpe ‘682, and Berger ‘728, *Applicants respectfully request that the Examiner provide proper support for the obviousness rejection under 35 U.S.C. § 103 as necessitated by the Guidelines, including an explicit analysis of the rationale relied upon by the Examiner*.

Applicants’ Claims are Patentable over the Proposed Strasnick ‘885 – DeKimpe ‘682 – Berger ‘728 Combination

Applicants respectfully submit that independent Claims 55 and 63 are considered patentably distinguishable over the proposed combination of Strasnick ‘885, DeKimpe ‘682, or Berger ‘728 for at least the reasons discussed above in connection with independent Claim 47.

With respect to dependent Claims 48, 50-54, 56, 58-62, and 64-72: Claims 48, 50-54, 67, and 68 depend from independent Claim 47; Claims 56, 58-62, 69, and 70 depend from independent Claim 55; and Claims 64-66, 71, and 72 depend from independent Claim 63. As mentioned above, each of independent Claims 55 and 63 include limitations similar to those discussed above in connection with independent Claim 47. Thus, dependent Claims 48, 50-54, 56, 58-62, and 64-72 are considered patentably distinguishable over the proposed combination of Strasnick ‘885, DeKimpe ‘682, or Berger ‘728 for at least the reasons of depending from an allowable claim and are therefore considered to be in condition for allowance.

For at least the reasons set forth herein, the Applicants respectfully submit that Claims 47, 48, 50-56, and 58-72 are not rendered obvious by the proposed combination of Strasnick ‘885, DeKimpe ‘682, or Berger ‘728, or in knowledge generally available to those of ordinary skill in the art at the time of the invention, and are in condition for allowance. Thus, Applicants respectfully request that the rejection of Claims 47, 48, 50-56, and 58-72 under 35 U.S.C. § 103(a) be reconsidered and that Claims 47, 48, 50-56, and 58-72 be allowed.

CONCLUSION:

In view of the foregoing remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although Applicants believe no fees are deemed to be necessary; the undersigned hereby authorizes the Director to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing this Response to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

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Date

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